

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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| POLLY ANNA SAMPLES | § | |
| v. | § | CIVIL ACTION NO. 6:12cv574 Crim. No. 6:11cr40 |
| UNITED STATES OF AMERICA | § | |

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Polly Anna Samples, proceeding *pro se*, filed this motion to vacate or correct her sentence under 28 U.S.C. §2255, complaining of the validity of her conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Samples pleaded guilty to and was convicted of possession of a List I chemical, receiving an agreed sentence of 72 months in prison, followed by three years of supervised release. She did not take a direct appeal of her conviction, but sought relief under Section 2255, arguing that she was not a felon at the time she committed the offense so her criminal history should have been lower and relying on a case called United States v. Simmons 649 F.3d 237 (4th Cir. 2011).

The Government was ordered to answer the motion to vacate and did so, arguing that Samples' criminal history was correctly computed and that Simmons, which concerned a North Carolina state-law conviction, was inapplicable. The Government also argued that Samples' claims were barred by the waiver of appeal provision in her plea agreement. Samples did not file a response to the answer.

After review of the pleadings, the Magistrate Judge issued a Report recommending that Samples' motion to vacate sentence be denied. The Magistrate Judge determined that Samples' claims were barred by the waiver of appeal provision, and that her claims also lacked merit on their face. The Magistrate Judge further recommended that Samples be denied a certificate of appealability *sua sponte*.

Samples received a copy of the Magistrate Judge's Report on March 5, 2013, but filed no objections thereto; accordingly, she is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 8) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence is hereby DISMISSED with prejudice. It is further

ORDERED that the Movant Polly Anna Samples is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 18th day of April, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', is written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**